IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 1638 OF 2004

Pawankumar Kejriwal ... Petitioner

Vs.

Sahdev Waman Malkar & Ors. ... Respondents

Mr. V.P. Vaidya for Petitioenr.

Mr. N.M. Ganguli for Respondents.

CORAM : F.I. REBELLO,J.
DATED : NOVEMBER 01, 2004

P.C.

. Rule. By consent heard forthwith.

. The grievance of the Petitioner herein is that they have been held to commit an act of unfair labour practice on the complaint filed by Respondent No. 1 without recording a clear cut finding either about the functional integrity or in respect of the various employers who in the complaint contended were averred running the business and who had no connection with the Petitioner. The other contention is that the report which was prepared in Complaint No. 354 of 1998 was taken on record and considered without giving an opportunity to the Petitioners herein.

. On the other hand on behalf of the Respondent, the learned counsel contends that considering that the report was prepared by an Officer of the

Tribunal and between the same parties, the tribunal could have considered the said report. It is further submitted that the findings on record are based on material and in that light of that this court ought not to interfere with the order passed by the Industrial Court.

. Having considered the challenges, in my opinion, the impugned order will have to be set aside. Firstly there are no clear cut findings about functional integrity which would be material for granting reliefs as prayed for. Furhter the report prepared in another complaint by itself could not have considered without forming part of that complaint and opportunity being given to the Petitioners herein. It is not necessary to go into the other aspects of the matter. On this count alone the order is liable to be set aside. In the light of the above, the following order :

. The impugned order dated 31.7.2004 is set aside. The matter is remanded back to the court for reconsideration. It will be open to the parties, if so desired to lead additional evidence including to place reliance on the report prepared in Complaint No. 354 of 1998 in which case the other party will have opportunity of meeting the evidence led on behalf of any party to the proceedings.

. Considering that the matter is very old, tribunal is directed to dispose of the complaint on party producing authenticated copy of this order within four months thereafter.

. Rule made absolute. No order as to costs.

(F.I. REBELLO,J.)